IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 851 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARBHAI UKKADBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KV SHELAT for Appellant(s) : 1,
MR PD BHATE ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 04/04/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.K.V.Shelat, appearing for the appellant – original accused No.2 and learned APP, Mr.P.D.Bhate, appearing for the respondent – State.

2. Present appeal is filed by appellant - Shankarbhai Ukkadbhai against the order of conviction and sentence recorded by the trial Court for the offence punishable under Section 326 of IPC by judgment and order dated 30th July,1992 in Sessions Case No.10 of 1990. For the offence u/s. 326 of IPC, RI for 5 years and fine of Rs.5000/-, in default, SI for 3 months, was imposed by the trial Court to the present appellant – original accused No.2. The trial Court also directed that from the amount of fine, Rs.2500/- shall be paid to Shantaben. In respect to accused No.7, the sentence is imposed under Section 324 of IPC for a period of 2 years with a fine of Rs.2000/-, in default, SI for a period of 1 month. Both the accused were acquitted for the offences punishable under Sections 147, 148, 149, 307, 327 and 504 of IPC and under Section 135 of Bombay Police Act on the ground of benefit of doubt under Section 235(1) of Code of Criminal Procedure.

3. The original accused No.7 – Mahadevbhai Mavjibhai has filed Criminal Appeal No.739 of 1992 against the conviction and original accused No.2 – Shankarbhai Ukkadbhai has also filed Criminal Appeal No.851 of 1992. This Court has granted the bail to both the accused in the sum of Rs.5000/-. This Court has also, while

admitting the appeal, ordered that present appeal to be heard with Criminal Appeal No.739 of 1992.

4. In Criminal Appeal No.739 of 1992, a settlement was arrived at between the parties outside the Court, which is on record and in view of that settlement, this Court has passed an order on 4th May,2004 (Coram : C.K.Buch,J.) while setting aside the conviction for accused No.7 for the offence punishable under Section 324 of IPC. This Court has permitted to compound the offence and consequently, accused No.7 - Mahadevbhai Mavjibhai is acquitted of the offence under Section 324 of IPC. This Court has also directed that amount of fine deposited by the appellant – accused No.7 be paid to the original injured complainant Zaverbhai on proper identification. Accordingly, that Criminal Appeal stand disposed of.

5. Today, when the matter has been taken up for hearing, learned Advocate, Mr.K.V.Shelat, submitted that in fact, the settlement (written compromise) dated 25th March,2003 arrived at between the parties includes the present appellant. Learned Advocate, Mr.Shelat, also submitted that they are the persons residing in one village and are inter-related. Therefore, learned

Advocate, Mr.Shelat, submitted that on the same terms as ordered by this Court in Criminal Appeal No.739 of 1992 dated 4th May,2004, may be passed in the present appeal, because parties have already arrived at settlement and now, there is no dispute between the parties i.e. the appellant, complainant as well as the injured. Learned APP, Mr.Bhate, also submitted that if the settlement is arrived at between the parties and earlier also this Court has set aside the conviction in respect to accused No.7, then, same order may be passed on the basis of the statement made by learned Advocate, Mr.Shelat. Therefore, considering these facts and circumstances of the matter, the settlement dated 25th March,2003 arrived at between the parties i.e. complainant and accused is recorded by this Court and on that basis, the conviction under Section 324 of IPC has been set aside. The order passed by this Court on 4th May,2004 is quoted as under :

> “This appeal is preferred by appellant Mahadevbhai Mavjibhai -original accused no.7 against the order of conviction and sentence recorded by the trail Court for the offence punishable under Sec.324 of IPC vide judgment and order dated 30.7.1992 in Sessions Case No.10/1990.
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> Today, the original complainant Zaverbhai Laljibhai is present before the Court. Original

accused no.7 who is appellant of this Cri. Appeal namely Mahadevbhai Mavjibhai is also present. It is jointly submitted by them that they have compounded the offence out of Court and, therefore, they may be permitted to tender a compromise pursis before the Court and same be accepted and appropriate further orders may be passed acquitting the appellant accused No.7.Today, written compromise arrived at between the complainant and Mahadevbhai Mavjibhai dated 25.3.2003 has been tendered today. I am told by ld. counsel appearing for the appellant that other signatories to the compromise are the persons who have also sustained injuries in the incident. Original complainant who is present in the Court has clarified his relations with other signatories to the compromise and stated that (i) Laljibhai Becharbhai is the father of the original complainant, (ii)Shantaben Hansrajbhai (brother's wife),(iii)Prabhaben Zaverbhai (wife of the complainant) and (iv)Labhubhai Thakarsibhai (younger brother's wife). Ld. counsel Mr.Ashish Oza has tendered said written compromise today before the Court in presence of the complainant and appellant original accused no.7 and both these persons have been identified by ld. counsel Mr.Oza as injured complainant and original accused no.7 respectively. Compromise arrived at and tendered today before the Court is taken on record.

The Court is satisfied about the genuineness of

the compromise and, therefore, both the parties are permitted to compound the matter in exercise of the powers vested in Court under Sec.320 of CrPC. Compounding of the offence is recorded as accepted.

In view of above, the impugned judgment and order dated 30.7.1992 passed by ld. trial Court in Sessions Case No.10/1990 convicting the appellant original accused no.7 for the offence under Sec.324 of the IPC, is hereby quashed and set aside as original complainant and appellant accused no.7 are permitted to compound the offence and consequently appellant accused no.7 Mahadevbhai Mavjibhai is hereby acquitted of the offence under Sec.324 of IPC. He is on bail, his bail bonds stand discharged. Rs.2000/ paid by the appellant accused no.7 by way of fine be paid to the original injured complainant namely Zaverbhai Laljibhai. Trial Court is directed to pass appropriate further orders to see that amount of fine deposited by the appellant accused no.7 is paid to the original injured complainant Zaverbhai on proper identification. Cri. Appeal stands disposed of accordingly.

Criminal Appeal No.851/1992 be placed for final hearing on 7.7.2004.“

6. In view of the observations made by this Court as referred above and considering the statement made by

learned Advocate, Mr.Shelat, the settlement (written compromise) includes the present appellant and, therefore, the impugned judgment and order dated 30th July,1992 passed by trial Court in Sessions Case No.10 of 1992 convicting the appellant – original accused No.2 for the offence under Section 326 of IPC is hereby quashed and set aside and original complainant and appellant – accused No.2 are permitted to compound the offence and consequently, appellant – accused No.2 – Shankarbhai Ukkadbhai is hereby acquitted of the offence under Section 326 of IPC. He is on bail, his bail bonds stand discharged. Rs.5000/- has been deposited by the appellant – accused No.2 by way of fine. The trial Court has also directed to pay Rs.2500/- to the injured Shantaben and, therefore, now only Rs.2500/- remains. Same shall have to be paid to injured Shantaben. The trial Court is directed to pass appropriate orders to see that remaining amount of fine, deposited by the appellant – accused No.2, be also paid to injured Shantaben on proper identification. Present Criminal Appeal stands disposed of accordingly.

(H.K.RATHOD,J.)

(vipul)